

Chemical Weapons Convention Challenge Inspections

Questions Facing
the U.S. Defense Industry

Order No. 108P



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INTRODUCTION

Under the Chemical Weapons Convention (CWC), a challenge inspection could occur at any facility—even a facility not declared under the CWC—to resolve an allegation of non-compliance. Although challenge inspections are expected to be very infrequent, such an inspection could occur at any time. A challenge inspection would be conducted on very short notice and would be highly intrusive. For this reason, defense contractors have many questions about challenge inspections.

This pamphlet provides answers to some of these questions and refers facility representatives to government assistance available through the Departments of Commerce (DOC) and Defense (DoD) to help reduce adverse effects and protect national security, confidential business, and other sensitive information.

This pamphlet is part of a series about the Chemical Weapons Convention and its potential arms control security impact. It was prepared by the Defense Treaty Inspection Readiness Program (DTIRP) to increase **Readiness Through Awareness** within the U.S. Government and defense contractor community. Additional copies of this pamphlet, as well as information about other arms control treaties and the application of security countermeasures, are available through the DTIRP Outreach Program.

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Questions:

HOW MANY CWC STATES PARTIES ARE THERE; AND WHEN DID THE CONVENTION ENTER INTO FORCE?

There are more than 150 States Parties to the Convention, including the United States.

The Convention entered into force on April 29, 1997—4 days after it was ratified by the United States.



WHO IS IN CHARGE OF IMPLEMENTING THE CONVENTION?

The Organization for the Prohibition of Chemical Weapons (OPCW) is the international body created to oversee implementation of the Convention. From its headquarters in The Hague, Netherlands, the OPCW includes a Technical Secretariat comprised of international civil servants. Within the Technical Secretariat, the Inspectorate Division and its staff of over 200 inspectors currently conduct CWC inspections. Their job during inspections is to observe and report information to the OPCW.

Each inspector goes through a rigorous nomination and acceptance process by the OPCW. Then, the States Parties review the OPCW's list and either accept or reject each inspector. Those rejected by the U.S. Government are not permitted to participate in any verification activities on U.S. territory, or in any place under U.S. jurisdiction or control. Those accepted may serve on any inspection team coming to inspect U.S. facilities. Although the U.S. Government may change its mind and object to a previously approved inspector, the United States cannot seek to remove any inspector already designated for, or involved in, an inspection.

WHAT TYPES OF CHEMICALS ARE PROHIBITED BY THE CONVENTION?

No chemicals, no matter how toxic, are banned under the Convention. The Convention bans chemical weapons (CW) and certain activities—not specific chemicals. For example, certain toxic chemicals, like phosgene, have been used as chemical weapons, but are also highly useful in the chemical industry. Therefore, CWC provisions create a monitoring regime to ensure that toxic chemicals and their precursors are used only for legitimate purposes and not for those purposes prohibited under the Convention.

The key to this monitoring regime is the creation of three lists or schedules of chemicals, as well as a fourth catch-all category based on a chemical's previous or potential use in CW. Through the use of these schedules, the Convention imposes an obligation to declare activities and to subject facilities to on-site inspection. The amount of data required in declarations and the stringency of the inspection regime varies according to the specific chemical and the schedule in which it falls.

Schedule 1 - These chemicals pose the highest risk to the object and purpose of the Convention. They include nerve agents such as VX and blister agents such as Mustard. Schedule 1 also includes final stage precursors. Schedule 1 chemicals have little use for purposes other than those prohibited under the Convention. Only a few U.S. companies currently produce Schedule 1 chemicals. These include pharmaceutical firms producing nitrogen mustards or ricin immunotoxins for cancer chemotherapy.

Schedule 2 - These chemicals pose a significant risk to the object and purpose of the Convention. They include toxic chemicals and precursors possessing properties that would enable them to be used in CW activities. Schedule 2 chemicals are not produced in large commercial quantities for purposes not prohibited under the Convention. One Schedule 2 chemical family is estimated to include over 10,000 individual chemicals.

Schedule 3 - These chemicals pose a risk to the object and purpose of the Convention. They include first generation CW and other toxic chemicals and precursors that might enable them to be used in CW activities. The U.S. chemical industry produces Schedule 3 chemicals in large commercial quantities for purposes not prohibited under the Convention.

Unscheduled discrete organic chemicals (UDOCs). In addition to scheduled chemicals, the Convention's verification regime applies to chemical production facilities producing certain levels of UDOCs. Facilities in this category may not actually produce any scheduled chemicals, but do have the potential to produce them. Therefore, these facilities must be declared and are subject to annual reporting requirements. Only those facilities producing pure hydrocarbons, explosives, plus a limited number of other exceptions, are exempt from declaration requirements.

IF A FACILITY DOES NOT USE OR POSSESS ANY OF THE CHEMICALS MONITORED UNDER THE CWC, CAN IT BE INSPECTED?

Yes. Any facility, declared or not, may be subject to a short-notice, challenge inspection. Challenge inspections can occur when one State Party to the Convention suspects another of conducting prohibited activities, and asks the OPCW to conduct a challenge inspection at the location of concern. The OPCW's Executive Council will review such requests, and unless the request is clearly frivolous or abusive, the inspection will go forward. The CWC does not recognize a right of States Parties to refuse a challenge inspection.

(However, the United States passed the CWC Implementation Act of 1998, which states, "Consistent with the objective of eliminating chemical weapons, the President may deny a request to inspect any facility in the United States in cases where the President determines that the inspection may pose a threat to the national security interests of the United States.")

HOW WILL A FACILITY BE NOTIFIED IF IT IS SELECTED FOR A CHALLENGE INSPECTION?

The OPCW transmits a challenge inspection notification to the Department of State Nuclear Risk Reduction Center (NRRC). Then, depending on the type of facility to be inspected—private industry, Department of Defense (DoD), DoD contractor, or other defense contractor—the established response and oversight center designated within the Department of Commerce, DoD, or the Military Services will conduct the notification. They will also issue guidance and advise the facility about the assistance to be provided by the U.S. Government.

HOW MUCH TIME WILL A FACILITY HAVE TO PREPARE FOR THE ARRIVAL OF A CHALLENGE INSPECTION TEAM?

Up to 48 hours. The U.S. Government must be notified at least 12 hours prior to the scheduled arrival time of the inspection team at the point of entry (Dulles International Airport, Washington, D.C.). The facility to be inspected will be notified by the appropriate U.S. Government agency as described in the preceding question. Then, possibly another 36 hours will elapse before the inspection team arrives in the vicinity of the facility. If the final inspection perimeter has not been agreed, up to 72 hours are allocated for perimeter and inspection plan negotiations before the inspectors must be permitted to cross the perimeter and begin the inspection.



WHO, AND HOW MANY INSPECTORS, WILL BE ON A CHALLENGE INSPECTION TEAM?

As with other types of inspections under the CWC, the inspection team will consist of international inspectors employed by the OPCW Technical Secretariat. Each inspection team will be tailored to meet the particular compliance concerns and type of facility to be inspected. In the case of a challenge inspection, none of the inspectors may be citizens of the inspected State Party or the requesting State Party. However, the requesting State Party may send an observer to accompany the inspection team. The observer is not an inspector, and is not guaranteed the same access rights.

The Convention does not specify how large an inspection team may be. Team size will vary depending on the type of facility and how much ground the team intends to inspect. However, each inspection team will likely have certain basic components.

The Inspection Team Leader and Deputy Team Leader will be technical experts who are the team's execution and operation managers, respectively.

The inspectors are chemical production technologists, process specialists, analytical chemists, munitions/CW specialists, as well as medical or logistical technicians. They possess Bachelor of Science degrees in chemical engineering or chemistry, must have six years practical experience, and have attained fluency in one of the six official United Nations languages. Inspectors must also have a working knowledge of English and have been trained to observe and document data. All OPCW employees, including the inspectors, are required to sign and comply with an OPCW secrecy agreement, which prohibits them from divulging any information obtained while employed at the OPCW. This agreement is binding for the duration of their employment plus five years.

Inspection assistants and technical support staff complete the team. They may include equipment operators/technicians, medical specialists, sealing and security specialists, health and safety specialists, and administrative staff.

HOW LONG WILL THE INSPECTION TEAM BE ON SITE DURING A CHALLENGE INSPECTION?

The total amount of time can vary greatly. The inspection team could be in the vicinity of the facility up to 72 hours before the inspection actually begins. During this time, the inspection team may conduct perimeter and exit monitoring activities, and negotiate the final perimeter, the inspection plan, and the level of access inside the perimeter. The inspection team will then have a maximum of 84 hours to complete all desired inspection activities inside the inspection perimeter. Continuous around-the-clock inspection activities may occur. After the inspection is completed, the inspection team may remain on site an additional 24 hours to prepare their preliminary findings in written form.

WILL THE INSPECTION TEAM HAVE ACCESS TO THE ENTIRE FACILITY?

Not necessarily. When the inspection team arrives at the point of entry, the parties will work to determine the geographic boundaries of the inspection team's requested perimeter and to reconcile the inspection team's diagram with the actual terrain of the requested area. The host team may submit an alternative perimeter and if agreement on a final perimeter cannot be reached through negotiation, the alternative perimeter will become the final perimeter.

Even inside the agreed final perimeter, all access and activities are negotiated. While the United States is obliged to allow the greatest degree of access possible, inspector access to places or areas can be restricted based on concerns for national security, safety, or protection of sensitive information. If access is restricted, however, the facility must demonstrate by alternative means that only non-prohibited activities are occurring within the excluded places or areas.

WHAT ARE THE SPECIFIC GUIDELINES FOR PROPOSING AN ALTERNATIVE PERIMETER?

There may be a number of reasons why a facility might wish to propose an alternative perimeter—to facilitate the inspection or to protect sensitive information, for example. Whatever the reason, the alternative perimeter must conform to specific guidelines.

- First, the alternative perimeter cannot be smaller than the requested perimeter. Like the requested perimeter, it has to run at least 10 meters outside any buildings or other structures and cannot cut through existing security enclosures.
- It must also include the entire requested perimeter, with no part being excluded.
- Taking into account the natural terrain features and man-made boundaries, it should bear a close resemblance to the requested perimeter. For instance, where a requested perimeter is roughly drawn, a proposed alternative perimeter could conform to existing roads, fence lines, waterways, and walkways. If a security barrier surrounds the facility, such as a fence, the alternative perimeter should normally run close to it.
- Finally, at least two of the following three characteristics should apply:
 - It should not extend to an area significantly greater than that of the requested perimeter
 - It should be a short, uniform distance from the requested perimeter
 - At least part of the requested perimeter should be visible from the alternative perimeter

WHAT TYPES OF COLLECTION MECHANISMS ARE AVAILABLE TO THE INSPECTION TEAM?

The inspection team has several means available to collect information relevant to the inspection mandate. Upon their arrival, the inspection team is permitted to go to the perimeter to monitor the facility's exits and to document all vehicles exiting by air, land, and sea. The inspection team may use video cameras and written logs for this purpose. Outside the perimeter, to a distance of 50 meters, the inspection team may examine all areas; take wipes, air, soil, or effluent samples; and photographs.

Once the inspection begins and the inspection team is inside the final perimeter, the inspectors may request to perform a number of compliance verification activities subject to negotiation between the inspection team and the inspected State Party. These activities include:

- Examining all areas
- Interviewing facility personnel to establish relevant facts
- Reviewing pertinent facility records
- Having photographs taken
- Having wipes, air, soil or effluent samples taken
- Recording observations during all of these activities

The inspection team may also perform on-site analysis of samples using its own approved equipment as agreed or negotiated with the inspected State Party.

CAN THE INSPECTION TEAM REVIEW PAPERS, DATA, RECORDS, AND OTHER MATERIALS? IF SO, ARE THERE ANY LIMITS TO WHAT THE INSPECTION TEAM CAN LOOK AT?

The answer to both questions is yes. Should your facility become the object of a challenge inspection, the inspection team's mission will be to observe, collect, and report information relevant to the inspection mandate (which contains instructions regarding the requesting State Party's concerns). In order to gather sufficient information to satisfy their mandate, the inspectors will likely exercise their right to request to see anything related to the inspection mandate.

However, there are limits on what the facility is required to let the inspection team see. Inspectors are obligated to strictly observe and refrain from activities beyond the inspection mandate. In other words, they have no right to look at items unrelated to the compliance concern. Questions regarding the relevancy of requested items will be resolved through continuing negotiations between the inspection team and the Government escorts and facility personnel. Inspections based on vaguely worded mandates may make these negotiations more difficult. The facility is not obligated to permit activities that unnecessarily hamper or delay facility operations or affect its safety.

WILL THE INSPECTION TEAM BE PERMITTED TO INTERVIEW FACILITY PERSONNEL?

The inspection team has the right to interview facility employees. U.S. Government escorts and facility representatives also have the right to be present during all such interviews. The questions asked by the inspection team during personnel interviews, must be relevant to the conduct of the inspection. Facility representatives may object to any questions posed during the interview that fall outside the relevance of the inspection. If, in turn, the head of the inspection team believes that such questions are relevant, the questions must be provided to the facility in writing for reply.

WHAT CAN A FACILITY DO TO LIMIT INSPECTION TEAM ACCESS?

During a challenge inspection, the U.S. Government must provide the greatest degree of access possible. It must also refrain from delaying or otherwise hindering the inspectors' ability to exercise their functions. At the same time, the CWC contains specific provisions to protect "sensitive installations" and to prevent the disclosure of confidential information and data not related to chemical weapons.

The Convention provides several examples of permitted managed access measures. For example, a facility may:

- Remove sensitive papers from office spaces
- Shroud sensitive displays, stores, equipment and pieces of equipment (e.g., computer or electronic systems)
- Log off computer systems and turn off data-indicating devices
- Restrict sample analysis to presence or absence tests for specific Schedule 1, 2 or 3 chemicals (or appropriate degradation products)
- Use random selective access techniques whereby inspectors are requested to select a given percentage or number of buildings of their choice to inspect (this principle can apply to the interior and content of sensitive buildings)
- In exceptional cases, only give individual inspectors access to certain parts of the inspection site

Facilities are not restricted solely to these measures. For instance, they may ask the inspectors to stay between lane markings on the floor or to follow a predetermined route between and through buildings. In addition, they may permit the inspection team to view sensitive areas only from doorways or windows, or only at certain specified times. In all cases, however, managed access measures must be carefully thought out.

Shrouding is a good example. Shrouding just one or two items could stand out and draw the inspection team's attention. Conversely, over-shrouding could prevent inspectors from gathering enough information to satisfy their inspection mandate.

Managed access also has an important caveat: whenever inspector access is restricted, every reasonable effort must be made to demonstrate that any object, building, structure, container or vehicle, where access has been limited, is not used for purposes prohibited under the Convention. For example, if a sensitive item is shrouded, partial removal of the shroud is a possible way to demonstrate compliance.

Managed access negotiations will take place between the inspection team and U.S. Government representatives throughout the inspection. Facility input to these negotiations is essential to ensure protection of facility interests. Nevertheless, if differences over the level of access arise and cannot be resolved on site, the final decision will be made by appropriate officials in Washington, D.C.

ARE THERE ANY SPECIAL REQUIREMENTS CONCERNING AMENITIES AND INFORMATION THAT MUST BE PROVIDED TO THE INSPECTION TEAM?

Yes. **Amenities.** The inspected State Party will be expected to arrange for or provide standard amenities, to include on-site transportation, working space, lodging, meals, medical care, administrative services, and a dedicated phone line for inspectors to reach the OPCW Technical Secretariat or an embassy.

Pre-inspection briefing. Upon arrival at the facility, and before the inspection begins, the inspection team must be briefed by facility representatives. The pre-inspection briefing should cover general information about the facility and the activities conducted there. It should also include safety considerations (for personnel and equipment), and the administrative and logistical arrangements necessary for the inspection. Facility representatives should also brief the inspection team on the availability of facility personnel and records.

This briefing gives some guidance to the inspection team about how to plan their inspection activities, and allows facility representatives to begin to establish some influence over the perspective with which the inspection team views the facility vis-à-vis the non-compliance allegation.

To summarize, the pre-inspection briefing should be as short as possible, it should respond to the non-compliance allegation, and it should attempt to describe the activities conducted within the requested or final perimeter as being compliant with the Convention.

Maps. The facility should also plan to provide the inspectors with facility maps and other helpful documentation. At least one map must be drawn to scale, showing all structures and significant geographic features at the facility.

WHERE WILL THE INSPECTION TEAM STAY DURING THE PERIOD OF INSPECTION AND WILL THEY BE MONITORED BY U.S. PERSONNEL WHEN NOT PERFORMING INSPECTION ACTIVITIES?

Accommodations for the inspection team should be reasonably close yet at sufficient distance from the facility to not inhibit or intrude on the facility preparation process during the inspection. Although the team has a right to conduct inspection activities continuously throughout the 84-hour period, this should not be viewed as an obligation to provide any sleeping accommodations on the inspected facility.

When not performing inspection activities, the inspection team will be accompanied by U.S. escorts. As international civil servants possessing privileges and immunities, inspection team members enjoy inviolability and protection of their living quarters and office premises. The same is true of their equipment, as well as their papers and correspondence.

WILL THE INSPECTION TEAM HAVE EQUIPMENT, AND WILL IT BE INSPECTED PRIOR TO BEING USED DURING AN INSPECTION?

Yes. The inspectors will bring with them equipment approved by the OPCW. U.S. Government personnel will inspect and verify it as OPCW-approved equipment when the inspection team arrives at the point of entry (POE). In addition to being OPCW-approved, all equipment will have been certified for use in the United States by DoD.

This technical equipment inspection will ensure the equipment does not possess additional capabilities to perform in a manner outside its intended purpose. All inspection equipment will be inspected again prior to the inspection team's final departure from the POE to ensure the equipment has not been altered and to ensure the deletion of memory from all data recording devices.

Inspection equipment may include:

- Measuring equipment
- Photographic equipment
- Detector equipment
- Sample collection, preparation, and transfer equipment
- Sample screening equipment
- Sample analysis equipment
- Equipment to mark and secure items
- Facility location and identification equipment
- Protective and safety equipment
- Medical equipment and supplies
- Communications equipment
- Administrative supplies

WILL THE UNITED STATES PROVIDE ASSISTANCE TO A FACILITY DURING AN INSPECTION?

Yes. A host team consisting of a representative from the U.S. lead agency (e.g., Department of Commerce or DoD), national escorts, a U.S. Government assistance team, representatives from the facility and other representatives, as appropriate, will be established to interact with the inspection team. The host team will, by consensus, address and resolve issues arising throughout the course of the inspection.

The government assistance team will be available to provide technical, treaty, and U.S. Government policy support. This team will assist in preparing the facility and will remain for the duration of the inspection.

There will be a Logistic Support Team (LST) comprised of government personnel assigned to the escort team. The LST will provide most of the logistical support required to transport the inspection team and to arrange for their off-site food, lodging and security. Facility representatives may wish to provide one on-site meal each day to expedite inspection activities.

WHO WILL COVER COSTS ASSOCIATED WITH SHUTTING DOWN OPERATIONS DURING AN INSPECTION?

At present there are no provisions for reimbursement should a facility shut down operations. Early identification of this situation in the pre-inspection briefing may bring other options into play. The negotiation or managed access process for inspection activities within the perimeter permits a forum to apply common sense and reach agreement on alternatives other than shut down. An extension of the inspection to an off-cycle period may be one approach.



CONCLUSION

This pamphlet has provided simple answers to the what, when, why, who, and how of CWC inspections. While on-site inspection activities may affect your facility, this pamphlet has described types of assistance and managed access procedures available to help you protect sensitive information. A summary of key points follows.

- The OPCW is charged with overseeing the implementation of the Convention, which entered into force on April 29, 1997, and has more than 150 States Parties.
- Scheduled chemicals are controlled according to their risk: Schedule 1 chemicals pose a high risk to the object and purpose of the Convention and are toxic chemicals developed or used as CW; Schedule 2 chemicals pose a significant risk and have the potential for use as CW; and Schedule 3 chemicals pose a risk, are important precursors to CW agents, and have high commercial utility.
- Any facility can be inspected even if it is not declared.
- Inspectors have several means available to collect information relevant to the inspection mandate but will not necessarily have access to your entire facility.
- During on-site inspections, you must provide the greatest degree of access possible, but may use managed access procedures to prevent the disclosure of information not related to the inspection mandate.

RELATED MATERIALS

- You will be expected to arrange for or provide standard amenities, such as on-facility transportation, working space, administrative services, and a dedicated phone line for inspectors. The LST will make the arrangements for food, lodging, and medical care for the inspectors.
- A host team will be established to interact with the inspection team to provide technical, treaty, and U.S. Government policy support throughout the inspection process. Elements of this team will assist in preparing the facility.

To obtain additional information about the CWC, other arms control treaties potentially affecting your facility, and the application of security countermeasures, contact the DTIRP Outreach Program coordinator at 1-800-419-2899, your local Defense Security Service (DSS) Industrial Security Representative, or your Government sponsor. Also see the list of related DTIRP products beginning on the next page.

101B Challenge Inspections under the Chemical Weapons Convention
Bulletin

102P Chemical Weapons Convention—The Impact
Pamphlet

104V Chemical Weapons Convention—The Impact
Video

105B The Chemical Weapons Convention—A Quick Reference Guide
Bulletin

107V Managed Access under the Chemical Weapons Convention
Video

112P Managed Access under the Chemical Weapons Convention
Pamphlet

114P Features of Chemical Facilities
Pamphlet

115P Routine Inspections under the CWC
Pamphlet

117P Guide for Challenge Inspections under the
Chemical Weapons Convention
Pamphlet (pocket size)

118P Guide for Initial and Routine Inspections under the
Chemical Weapons Convention
Pamphlet (pocket size)

119P CWC Challenge Inspection Planning Considerations
Pamphlet

122P Guide to Managed Access under the
Chemical Weapons Convention
Pamphlet (pocket size)

123A Development of a Chemical Weapons
Convention Pre-Inspection Briefing
Article

124A Site Preparation for Inspections under the
Chemical Weapons Convention
Article

125P CWC Inspection Preparation Guide
Pamphlet

127C Chemical Weapons Agreements Information
CD-ROM

129P Guide to Scheduled Chemicals
Pamphlet

130B CWC Initial Inspections—Lessons Learned
Bulletin

131P Rights & Obligations of the Inspection Team & the Inspected State
Party under the Chemical Weapons Convention
Pamphlet

132P Quick Reference Guide to Chemical Equipment
Pamphlet

133B Role of the Requesting State Party Observer in
CWC Challenge Inspection
Bulletin

152P CWC Inspector's Privileges and Immunities
Pamphlet

407C Arms Control Treaties Information
CD-ROM

408P Arms Control Agreements Synopses
Pamphlet

410P Quick Reference Guide to Arms Control Inspection Timelines
Pamphlet

413A Arms Control Developments: Weapons of Mass Destruction
Article

906B Transparency During Arms Control Inspections
Bulletin

907P DTIRP Arms Control Outreach Catalog
Pamphlet

908V Facility Protection Through Shrouding
Video

930C The Arms Control OPSEC Process
Automated CD-ROM

936V Verification Provisions—Point and Counterpoint
Video

942C DTIRP Outreach Products on CD
CD-ROM

950V The Technical Equipment Inspection (TEI) Process
Video

954T Why TEI?
Trifold Brochure